

SITE DEVELOPMENT PERMIT AMENDMENT

FILE NO.	HA06-027-01
LOCATION OF PROPERTY	Area bounded by Forest Avenue, Monroe Street, Stevens Creek Boulevard, and Winchester Boulevard (2855 Stevens Creek Boulevard)
ZONING DISTRICT	CG Commercial General
GENERAL PLAN DESIGNATION	Regional Commercial
PROPOSED USE	Site Development Permit Amendment to allow the installation of a 60-foot tall, free-standing sign adjacent to Interstate 880, consisting of a 125-square foot sign and a 375-square foot digital display area with variable messaging
ENVIRONMENTAL STATUS	Addendum to the Final Environmental Impact Report for the Valley Fair Shopping Center Expansion Project (Resolution No. 73809)
OWNER/ADDRESS	Valley Fair Mall LLC 2400 Forest Avenue San Jose, California 95128

FACTS

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts regarding this proposed project:

1. **Site Description and Surrounding Uses.** The subject site is approximately 71 gross acres, with approximately 17.6 gross acres located in the City of Santa Clara. The site is currently developed with a regional shopping center (Westfield Valley Fair Mall). The site is adjacent to small commercial offices and single-family residences to the north, commercial and mixed uses to the south, a commercial center to the west and Interstate 880 to the east.
2. **Project Description.** The original Site Development Permit (File No. H06-027) approved on November 19, 2007 allowed the construction of 640,000 square feet of commercial uses and 1,500,000 square feet of parking structures with approximately 4,500 parking spaces. The proposed Amendment would allow the installation of a 60-foot tall, free-standing sign adjacent to Interstate 880, consisting of a 125-square foot sign and a 375-square foot digital display area with variable messaging. The sign would be located between two proposed parking garages, approximately 750 feet south of the nearest residence.

3. **General Plan Conformance.** The project is consistent with the site's Envision San Jose 2040 General Plan Land Use / Transportation Diagram designation of Regional Commercial, which is applied to commercial areas that attract customers from a regional area and play an important fiscal and economic role in the City.
4. **Municipal Code Compliance.**
 - a. **Zoning Ordinance.** Section 20.100.610 of the City of San José Municipal Code states that a Site Development Permit is required prior to the issuance of any building permit for erection, construction, enlargement, placement or installation of a building or structure in conformance with the applicable zoning regulations.
 - b. **Sign Ordinance.** Consistent with Section 23.04.035 of the Municipal Code, the proposed freeway sign is no greater than 60' in height and is 500 square feet, of which 375 square feet (75%) is programmable electronic. The illuminated portions of the sign are oriented towards the freeway and away from the nearby residential units to the north.
5. **Environmental Review.** An Addendum to the Final Environmental Impact Report (EIR) for the Valley Fair Expansion Project was granted for this project under the provisions of environment review requirements of Title 21 of the San José Municipal Code implementing the California Environmental Quality Act of 1970, as amended. The project will not result in a substantial increase in the magnitude of any significant environmental impact previously identified in the Valley Fair Expansion Project FEIR. Therefore, an Addendum to the Valley Fair Expansion Project FEIR is appropriate since none of the conditions that require a subsequent EIR in CEQA Guidelines §15162 apply.

FINDINGS

The Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts with respect to the Sign Permit findings (Section 23.02.1340), that:

1. Finding that the proposed sign complies with the requirements of this title.
 - a. Consistent with Section 23.04.035 of the Municipal Code, the proposed freeway sign is no greater than 60' in height and is 500 square feet, of which 375 square feet (75%) is programmable electronic. The illuminated portions of the sign are oriented towards the freeway and away from the nearby residential units to the north.
2. Finding that the location and design of the proposed sign do not create any safety hazard.
 - a. The proposed freeway sign is visible from Forest Avenue, Monroe Street, the Stevens Creek Overpass at I-880 and adjacent properties; however, the proposed placement and design of the structure reduces the apparent mass of the structure and prevents visibility of the sign from the adjacent residences to the north. The proposed project will not affect traffic access or pedestrian access to the site and will not reduce the number of parking spaces on the site.
3. Finding that the proposed sign is consistent with the intent of this title based upon the following factors:
 - a. Location, material, color and scale;
 - b. Compatibility with architectural and landscape features; and
 - c. Compatibility with signs on the same parcel and on adjoining parcels.

- i. The proposed sign is consistent with the design and materials of the surrounding buildings, signage, and approved future development. Existing landscaping will not be affected and the proposed project will not affect traffic access or pedestrian access to the site and will not reduce the number of parking spaces on the site.

Finally, the Director of Planning, Building, and Code Enforcement concludes and finds, based on the analysis of the above facts with respect to the Site Development Permit findings (Section 20.100.630), that:

1. The interrelationship between the orientation, location and elevations of the proposed buildings and structures and other uses onsite are mutually compatible and aesthetically harmonious in that:
 - a. The proposed sign is consistent with the design and materials of the surrounding buildings and approved future development.
2. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood in that:
 - a. The proposed freeway sign is visible from Forest Avenue, Monroe Street, the Stevens Creek Overpass at I-880 and adjacent properties; however, the proposed placement and design of the structure reduces the apparent mass of the structure and prevents visibility of the sign from the adjacent residences to the north.
3. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties in that:
 - a. An Addendum to the Valley Fair Expansion Project FEIR applicable to the original project (Resolution No. 73809) was completed for the proposed project.
4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.
 - a. Existing landscaping, utility systems, and trash facilities will not be affected by the project.
5. Traffic access, pedestrian access and parking are adequate.
 - a. The proposed project will not affect traffic access or pedestrian access to the site and will not reduce the number of parking spaces on the site.
6. The application is consistent with the site's General Plan designation of Regional Commercial, which is applied to commercial areas that attract customers from a regional area and play an important fiscal and economic role for the City.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and

- b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Site Development Permit shall automatically expire four (4) years from and after the date of issuance hereof by said Director, if within such four-year period, the proposed construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Site Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws. (AP3-2013)
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance to Plans.** Development of the site shall conform to approved Site Development Permit Amendment plans entitled "Westfield Valley Fair Site Media Group Pylon" last revised on March 16, 2015 on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04), with the exception of any subsequently approved changes.
6. **Sign Design.** Sign design and location, as delineated on the approved plan set, is hereby approved.
7. **Sign Requirements.** The approved sign shall conform to the requirements of Title 23 of the San Jose Municipal Code, including the following:
 - a. *Commercial Speech.* The sign shall not display off-site commercial speech as defined in Section 23.02.104 of Title 23 of the San Jose Municipal Code, as amended.
 - b. *Operation Requirements.* Operation of the Programmable Electronic Sign shall conform to the requirements of Section 23.02.905 of Title 23 of the San Jose Municipal Code, as amended.

8. **Hours of Operation.** The programmable electronic sign component of the sign shall not be illuminated between the hours of 10:00 p.m. and 6:00 a.m.
9. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
10. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
11. **Revocation.** This Permit is subject to revocation for violation of any of its provisions or conditions.
12. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
13. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
14. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
15. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
16. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
17. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
18. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, HA06-027-01, shall be printed on all plans submitted to the Building Division.
 - b. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
19. **Building and Property Maintenance.** The developer shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
20. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.

21. **Conformance to Mitigation Monitoring & Reporting Program.** This project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development. The following mitigation or avoidance measures are organized by impact category and identify (responsibility for monitoring compliance).

a. Air Quality (Project Applicant).

- i. BAAQMD Basic Construction Mitigation Measures Recommended for All Proposed Projects (Table 8-1)
- ii. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- iii. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- iv. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- v. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- vi. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - 1) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
 - 2) Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- ix. BAAQMD Additional Construction Mitigation Measures Recommended for Projects with Construction Emissions Above the Threshold (Table 8-2)
- x. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.
- xi. All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
- xii. Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.

- xiii. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
 - xiv. The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
 - xv. All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
 - xvi. Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel.
 - xvii. Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.
 - xviii. Minimizing the idling time of diesel powered construction equipment to two minutes.
 - xix. The project shall develop a plan demonstrating that off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NOx reduction and 45 percent PM reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.
 - xx. Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., Regulation 8, Rule 3: Architectural Coatings).
 - xxi. Require that all construction equipment, diesel trucks, and generators be equipped with Best Available Control Technology for emission reductions of NOx and PM.
 - xxii. Requiring all contractors use equipment that meets CARB's most recent certification standard for off-road heavy duty diesel engines.
- b. Biological Resources (Project Applicant).
- i. Required tree mitigation shall comply with Condition #24 of this permit. The following measures are included in the project to reduce construction related impacts to trees to be preserved:
 - 1) Damage to any tree during construction shall be reported to the City's Environmental Senior Planner, and the contractor or owner shall treat the tree for damage in the manner specified by the City Arborist;
 - 2) No construction equipment, vehicles or materials shall be stored, parked, or left standing within the tree dripline; and
 - 3) Drains shall be installed according to city specifications so as to avoid harm to trees due to excess watering; and
 - 4) Wires, signs and other similar items shall not be attached to trees; and

- 5) Cutting and filling around the base of trees shall be done only after consultation with the City Arborist and then only to the extent authorized by the City Arborist; and
 - 6) No paint thinner, paint, plaster or other liquid or solid excess or waste construction materials or wastewater shall be dumped on the ground or into any grate between the dripline and the base of the tree or uphill from any tree where certain substances might reach the roots through a leaching process; and
 - 7) Barricades shall be constructed around the trunks of trees as specified by a qualified arborist so as to prevent injury to trees making them susceptible to disease causing organisms; and
 - 8) Wherever cuts are made in the ground near the roots of trees, appropriate measures as determined by the project consulting arborist, shall be taken to prevent exposed soil from drying out and causing damage to tree roots. (SJMC 13.32.130)
 - 9) A qualified ornithologist shall conduct protocol-level, pre-construction surveys for nesting raptors on-site not more than 30 days prior to the onset of ground disturbance or tree removal, if disturbance is to occur during the breeding season (Feb. 1 to Aug. 31). All large trees within 250 feet of the limits of grading would be inspected as construction occurs on the project site.
- ii. If a nesting raptor is detected, an appropriate construction buffer shall be established during the nesting season. Actual size of buffer will be determined by the ornithologist and will depend on species, topography, and type of construction activity that would occur in the vicinity of the nest but would be a minimum of 250 feet.
 - iii. A report summarizing results of the pre-construction survey and subsequent efforts to protect nesting raptors (if found to be present) shall be submitted to the City's Environmental Senior Planner.
- c. Cultural Resources (Project Applicant).
- i. In the event any significant cultural materials are encountered, all construction within a radius of 50-feet radius of the find would be halted, the Director of Planning, Building and Code Enforcement would be notified, and a professional archaeologist will examine the find and make appropriate recommendations regarding the significance of the find and make appropriate recommendations regarding the significance of the find and the appropriate mitigation. Recommendations could include collection, recordation, and analysis of any significant cultural materials.
 - ii. If human remains are discovered, the Santa Clara County Coroner will be notified. The Coroner would determine whether or not the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he would notify the Native American Heritage Commission, would attempt to identify "most likely" descendants of the deceased.
 - iii. If the Director of Planning, Building and Code Enforcement finds that the archaeological find is not a significant resource, work would resume only after the submittal of a preliminary archaeological report and after provisions for reburial and ongoing monitoring are accepted.

- iv. A final report will be prepared by the project archaeologist when a find is determined to be a significant archaeological resource, and/or when Native American remains are found on the site. The final report will include background information on the completed work, a description and list of identified resources, the disposition and curation of these resources, and testing, and other recovered information, and conclusions. The report shall be submitted to the Environmental Senior Planner.
- d. Hazards and Hazardous Materials (Project Applicant).
 - i. Soil investigation for vertical and lateral definition to assist in the characterization of soil shall be conducted by a qualified environmental professional to assess the potential presence and extent of agricultural pesticides in the site's shallow soils. The soil investigation shall conform to State and local guidelines and regulations.
 - ii. If elevated pesticide concentrations are identified, common and potentially applicable remedial measures may include: 1) excavation and off-site disposal of the impacted soil at a permitted facility; 2) the use of engineering and administrative controls, such as consolidation and capping of the soil on-site and land use covenants restricting certain activities/uses; and 3) a combination of the above. If on-site capping measures are warranted based on the sampling results, remedial work at the site would be overseen by an appropriate regulatory agency, such as the Department of Toxic Substances Control (DTSC) or the Santa Clara County Department of Environmental Health (SCCDEH).
 - iii. In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site buildings to determine the presence of asbestos-containing materials and/or lead-based paint.
 - iv. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Construction Standard, Title 8, California Code Regulations 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings would be disposed of at landfills that meet acceptance criteria for the waste being disposed.
 - v. All potentially friable ACMs shall be removed in accordance with local, state, and federal guidelines prior to building demolition or renovation that may disturb the materials. All demolition activities will be undertaken in accordance with Cal/OSHA standards contained in Title 8 of the CCR, Section 1529, to protect workers from exposure to asbestos.
 - vi. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
 - vii. Materials containing more than one (1) percent asbestos are also subject to BAAQMD regulations. Removal of materials containing more than one (1) percent asbestos shall be completed in accordance with BAAQMD requirements.
- e. Hydrology and Water Quality (Project Applicant).
 - i. The following project-specific measures, based on RWQCB Best Management Practices, have been included in the project to reduce construction-related water quality impacts. These measures are updated versions of the mitigation measures included in the 2007 Valley Fair FEIR. All mitigation would be implemented prior to

and during earthmoving and demolition activities on-site and would continue until the construction is complete.

- 1) Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- 2) Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- 3) All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- 4) Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- 5) All trucks hauling soil, sand, and other loose materials shall be required to cover all trucks or maintain at least two feet of freeboard.
- 6) All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- 7) Vegetation in disturbed areas shall be replanted as quickly as possible.
- 8) All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
- 9) The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- 10) A Storm Water Permit will be administered by the State Water Resources Control Board (SWRCB). Prior to construction grading for the proposed land uses, the project proponent will file an NOI to comply with the General Permit and prepare a SWPPP which addresses measures that would be included in the project to minimize and control construction and post-construction runoff. Measures will include, but are not limited to, the aforementioned RWQCB Best Management Practices.
- 11) The certified SWPPP will be posted at the project site and will be updated to reflect current site conditions.
- 12) When construction is complete, a Notice of Termination (NOT) for the General Permit for Construction will be filed with the SWRCB. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction stormwater management plan is in place as described in the SWPPP for the site.

22. Revocation, Suspension, Modification. This Site Development Permit Amendment may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **1st day of April, 2015.**

Harry Freitas, Director
Planning, Building, and Code Enforcement

Deputy

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